

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TIMOTHY JOSEPH CARROLL,

Plaintiff,

vs.

CHRIS LUEBE, LEON CHAPMEN,
HUNTER LEWIS, JAMES JOHNSON,
EDGAR OLIVAN, COREY BLACK,
JULIE BATENHORST, JOY JOHNSON,
Nurse; KAIN SPARR, MIKE MEJSTRIK,
VERLIN REDLINGER, CHERYL
HEIMAN, RAY PARTEE, CHRIS
NEUHAUS, RAY WINTER, DR. JUVET
CHE, ANDREW CORBIN, TYLER
STENDER, and KOLTON NEUHAUS,

Defendants.

8:21CV33

ORDER

Plaintiff has filed five motions. Based on the record, none of the defendants have been served with his complaint, and none have responded to the complaint or voluntarily appeared. The motions are summarized as follows:

- Filing No. 17 alleges the Norfolk Regional Center (NRC) had or has a video recording of the incident underlying Plaintiff's claims. Plaintiff claims the NRC failed to retain and secure the video recording, allowing it to be altered to exclude key portions of video evidence. He asks the court to take judicial notice of this failure and to hold NRC, which is not a named defendant, responsible. He further asks the court to take appropriate action against defendant Hunter Lewis.

- Filing No. 18 moves to dismiss Ray Partee as a defendant, without prejudice. It further moves for leave to subpoena Ray Partee for a deposition.
- Filing No. 19 seeks leave to serve subpoenas on two non-party witnesses.
- Filing No. 20 seeks an order requiring Ben Goins, an Assistant Attorney General for the State of Nebraska, to accept service on behalf of defendant Chris Neuhaus because Neuhaus is no longer employed at NRC and Plaintiff does not have Neuhaus' home address.
- Filing No. 21 requests an order requiring discovery of information Plaintiff believes he needs to litigate this action, including Chris Neuhaus' home address.

As to the motions requesting discovery, since the defendants have not filed an answer or response to the complaint, the parties have not completed and filed a Rule 26(f) Report. So, the court has not entered a case scheduling order. As such, Plaintiff's motions to subpoena witnesses and to obtain discovery, including discovery of the address of a named defendant, must be denied as premature.

Plaintiff's motion to require Ben Goins to accept service on behalf of Chris Neuhaus must also be denied. Based on the information within Plaintiff's submissions, Plaintiff has failed to show that he is entitled to a court order authorizing alternative methods of service, including an order requiring anyone within the Nebraska Attorney General's office, Neuhaus' alleged counsel, to accept service of Plaintiff's summons on Neuhaus' behalf.

Plaintiff's motion regarding the alleged spoliation of the video recording must be denied at this time. The defendants are entitled to respond to Plaintiff's allegations, but they have not answered or otherwise appeared in this case. Like Plaintiff's discovery requests, his motion for a court order finding key video evidence has been lost or altered is premature.

Although all other requests within Plaintiff's pending motions are premature, at this stage of the case, Plaintiff is entitled to voluntarily dismiss a defendant. His request to voluntarily dismiss Ray Partee as a defendant, without prejudice, will be granted.

Accordingly,

IT IS ORDERED:

1) Plaintiff's claims against Ray Partee are dismissed without prejudice. The clerk shall correct the docket accordingly.

2) In all other respects, Filings 17, 18, 19, 20, and 21 are denied.

Dated this 2nd day of June, 2021.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge